



Control Number: 45798



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DOCKET NO. 45798

RECEIVED

PETITION OF GUADALUPE
VALLEY DEVELOPMENT
CORPORATION TO AMEND
GREEN VALLEY SPECIAL
UTILITY DISTRICT'S
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN
GUADALUPE COUNTY
BY EXPEDITED RELEASE

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PUBLIC UTILITY COMMISSION

2016 APR 11: 00
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

MOTION FOR REHEARING

COMES NOW, Green Valley Special Utility District (GVSUD or District) and files this its Motion for Rehearing in the above-referenced Docket.

The Public Utility Commission of Texas (PUC) has fundamentally erred in granting the petition for expedited release under Water Code 13.254(a)(5) filed by Guadalupe Valley Development Corporation (GVDC) in this docket. Two fundamental errors committed by the PUC override all other actions of the agency. They are:

I. Violation of Federal Statute

It is uncontested that GVSUD has outstanding indebtedness to the USDA Rural Development. This debt is the result of a loan issued under the authority of 7 USC § 1926. Subsection (b) of that statute expressly states that a local governmental entity may not abridge or alter the franchise (certificate of convenience and necessity) of the debtor so long as there remains unpaid debts to the United States government. Under these circumstances, the PUC is barred by federal law from involuntarily decertifying GVSUD until the District's debt has been completely paid.

The PUC, a creation of Texas law and an agency responsible to the Texas Legislature, chose in this case to ignore 7 USC § 1926(b) and involuntarily removed GVSUD from a portion of its franchised service area. The apparent justification of the PUC was the legislature's directive in Water Code § 13.254 (a-6), which directs the PUC to ignore the existence of federal debt when ruling on an expedited release petition. The staff of the PUC stated in its briefs in this case that it was all right for the agency to do so because it was more convenient. Convenience is not a principle of law which allows a state agency to overrule the express mandate of the U. S. Congress. A directive of the Texas Legislature is also not a legitimate reason for a state agency to ignore the express mandate of the United States Congress. The Supremacy Clause of the United States Constitution, Article VI, Clause 2, of which every small child in America learns in grade school, establishes the Constitution and law of the United States to be the supreme law of the land. The United States Constitution, federal statutes and the decisions of federal courts have always taken precedence over state constitutions, statutes, and court decisions, and have done so without exception since the United States Constitution was adopted when Texas was still a territory owned by Spain. When the Republic of Texas joined the United States in the U. S. Treaty of Annexation – Texas, April, 1844, it agreed to abide by the Constitution and laws of the United States and made its laws subservient to those of the federal government. The PUC has erred in this docket in trying to un-do this long and well-established system of justice for the benefit of a single developer.

II. The area in question is being served

Water Code § 13.254 (a-5) allows territory to be removed from the service area of the existing CCN holder if the property is not being served by the CCN holder. The Texas Legislature has made “service” a defined term for the purposes of all matters arising under Chapter 13 of the Texas Water Code. That definition is found at Texas Water Code 13.002(21) and states:

"Service" means any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

If GVSUD has committed any act pursuant to its duty to serve GVDC, then the GVDC property is receiving service and may not be involuntarily deleted from GVSUD's CCN. GVSUD has done a multitude of things to provide service to its sewer service area, including the GVDC tract, among which are: contracting for wholesale service from a nearby municipality, developing a regional sewer service plan, applying for a permit to build a regional wastewater treatment plant not far from the GVDC property, and offering GVDC a plan for service under the District's existing policies. There is no requirement under this express definition of "Service" that GVSUD have pipes in the ground connected to an operating sewer treatment plant as suggested by the PUC's Order.

GVSUD has "Facilities" through which GVDC may receive sewer service under the terms of the District's policies, which include requiring GVDC to pay for various facilities to be owned by GVSUD. The term "Facilities" is also a defined term under the statute and controls this case. It says:

"Facilities" means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

The Interlocal Agreement GVSUD has with the City of Marion is a "Facility" under both Water Code Sections 13.002(9) and 13.002(21). The wastewater treatment plant GVSUD is in the process of permitting and building is a "Facility." The pipes that will be constructed to connect the GVDC tract with a GVSUD treatment plant will be "Facilities" under the statute.

Under the express definitions created by the Texas Legislature, the GVDC property is being served. The PUC is empowered to adopt rules to facilitate the implementation of statutes written by the Legislature, but no agency has the power to rewrite or to interpret statutes in a manner that clearly conflicts with the terms stated by the Legislature. The PUC has erred in ignoring the literal language of Chapter 13 of the Water Code set forth in the definitions section when it determined the GVDC tract was unserved.

III. Prayer

Wherefore, premises considered, GVSUD prays that the PUC grant this Motion and reverse and render a final decision denying GVDC's petition.

Respectfully submitted,

LAW OFFICES OF MARK H. ZEPPA, PC
4833 Spicewood Springs Road, Suite 202
Austin, TX 78759
(512) 346-4011
FAX (512) 346-6847

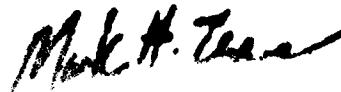
By:



Mark H. Zeppa
State Bar No. 22260100
Attorney for Green Valley Special Utility District

CERTIFICATE OF SERVICE

I, Mark H. Zeppa, counsel for the Applicant, certify the foregoing pleading was served in accordance with 16 TAC § 22.74 on July 29, 2016:

A handwritten signature in black ink, appearing to read "Mark H. Zeppa", written in a cursive style.

Mark H. Zeppa